



Civil Resolution Tribunal

Date Issued: July 26, 2018

File: SC-2017-006353

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Truong v. Wilton Lee doing business as AutoXpress Car Wash, 2018*
BCCRT 365

B E T W E E N :

Xuan Tu Truong

APPLICANT

A N D :

Wilton Lee doing business as AutoXpress Car Wash

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Samuel A. Hyman

INTRODUCTION

1. This is a dispute over damage to the applicant, Xuan tu Truong's car. The applicant says that the respondent's carwash facility malfunctioned causing the damage. The applicant asks for \$1,800.00 for the repair costs \$1,800.00 and filing fees and expenses associated with the dispute.

2. The respondent, Wilton Lee doing business as AutoXpress Car Wash, says that the malfunctioning machine did not cause the damage. They say they are not responsible for any damage to the car and ask that the dispute be dismissed.
3. The parties are self-represented.
4. For the reasons that follow, I dismiss the applicant's dispute and find that the respondent is not responsible for the damage to the applicant's car.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;

- b. order a party to pay money;
- c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

- 9. The issue in this dispute is whether the applicant has proven that the respondent's malfunctioning carwash machine was responsible for the damage to the applicant's vehicle, and if so what is the appropriate remedy.

EVIDENCE AND ANALYSIS

- 10. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. While I have reviewed all of the submissions, evidence and information provided by the parties, I have only addressed the evidence and arguments of the parties necessary to explain my decision.

Background

- 11. The essential facts of this negligence claim are not in dispute. On September 24, 2017 the applicant attended the respondent's carwash. It is undisputed that during that the carwash machine malfunctioned. The applicant say the carwash caused damage to the vehicle. The applicant submitted video evidence of the usual operation of the carwash, a recording of an employee of the carwash, and invoices for repairs to their vehicle.
- 12. The respondent says that they are not responsible for the damage claimed. They provided video evidence of the September 24, 2017 carwash, a redacted Insurance Corporation of British Columbia (ICBC) claim report filed by the applicant, and their own submissions.
- 13. The applicant says the respondents failed to take the care required of a carwash operator.

Negligence

14. An applicant bears the burden of proving a negligence claim on a balance of probabilities. The general elements of a negligence claim are: the respondent owes a duty of care, the respondent failed to meet a reasonable standard of care, it was reasonably foreseeable that the respondent's failure to meet that standard could cause the applicant's damages, and the failure did cause the claimed damages. It is not enough for the applicant to show that respondent *may* have caused the damage.
15. The applicant and respondent agree that the carwash malfunctioned while the applicant's car was in the carwash bay. They agree that a belt detached causing the carwash to stop functioning. I find that it is undisputed that the carwash machine malfunctioned while the applicant's vehicle was in the bay, and that belt likely struck the car when it detached.
16. I accept that the respondent owed the applicant a duty of care, and that a functioning car was a reasonable standard of care. There is no dispute that there was some damage to the vehicle. The issue here is whether the malfunctioning carwash machine caused damage to hood, the left fender, and left ¼ panel the damage to the vehicle.
17. The applicant relies upon video of one of the respondent's employees. Though the video does not identify the employee, I accept that both parties agree that the voice heard on the video is an employee of the respondent. The applicant says that the employee accepted fault for the incident, including that the carwash caused the damage. I find that the recording only demonstrates that the employee acknowledged that the carwash malfunctioned, that the employee would speak to the owner, and that this employee felt the applicant would be compensated. It does not show, as the applicant says it does, that the respondent actually was at fault or that the respondent accepted responsibility.

18. The applicant also relies upon video of the carwash bay after the incident. They say it shows that some cables had fallen and struck the vehicle. As above, I accept that this occurred. However, the evidence that the malfunction occurred does not mean that the vehicle was damaged by the malfunction.
19. The respondent relies upon the redacted ICBC claim that the applicant filed and a video recording of the car as it entered the carwash and until it exited the carwash.
20. The respondent says that ICBC's decision that the damage occurred because of the applicant's negligent operation of the vehicle shows that the carwash is not at fault. I accept that ICBC determined the vehicle's collision with the carwash's stationary arm caused the damage. However, that decision was for insurance purposes and it is open to me to come to a different conclusion.
21. The respondent goes on to say that, the video evidence of the car entering the carwash and exiting shows that the damage most likely occurred when the car struck the stationary carwash arm. The damage claimed was to the left side and hood of the car where it appears in the video the vehicle struck the carwash arm. The applicant did not dispute in their evidence that the video showed their car moving forward and backward. However, they do say that they only proceeded forward because the bay doors of the carwash opened indicating they should do so.
22. The video, though grainy, shows the vehicle enter the carwash bay. It appears that the carwash begins and the washing arm circles the vehicle. Towards the end of the video, the carwash stops and what appears to be the carwash arm remains in the path of the vehicle. The vehicle proceeds into the carwash arm moments later, and then reverses. The carwash arm moves out of position and the vehicle exits the carwash. I find that this video is the best evidence of the driver's actions in the carwash.
23. The applicant's submissions about the respondent's video contradicts itself. In one part, they state that they only proceeded because the carwash bay door opened,

but say in their final reply that they did not drive into anything in the carwash. I find that I can resolve this based upon the video evidence. Though grainy, it clearly shows the vehicle strike an object, reverse, and then proceed out of the carwash bay. I find that the applicant struck the arm of the carwash while it was stationary in the bay.

24. The applicant has provided insufficient evidence to show that the falling cables as first alleged, caused the damage to the hood and left side of the car. Further, they have not provided sufficient evidence of what caused the damage, and I accept that it is as at least as likely as not, that the driver's actions in proceeding into the stationary arm of the carwash was the cause. Finally, I find that the applicant has provided insufficient evidence to show that proceeding into the carwash arm was due to some fault of the respondent. I find that this conclusion is consistent with the video evidence, the location of the damage, and the ICBC claim report that the applicant did not dispute.
25. As there is insufficient evidence of what caused the vehicle damage, I find that applicant has failed to prove on a balance of probabilities that the respondent is responsible for it.

Conclusion

26. Given my conclusions above, I find that the respondent is not responsible to pay for the damage to the applicant's car.
27. In accordance with section 49 of the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of its tribunal fees or expenses because they were unsuccessful in this dispute. The parties did not request other expenses.

ORDER

28. I dismiss the applicant's dispute.

Samuel A. Hyman, Tribunal Member